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COMMITTEE ON SUBORDINATE LEGISLATION

(TENTH LOK SABHA)

Twenty-Third Report

(Presented on 22 December, 1995)

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CORRIGENDA

TO

THE TWENTY-THIRD REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION [TENTH LOK SABHA]

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(1995-96)

Shri Amal Datta — *Chairman*

2. Shri Prithviraj D. Chavan
3. Shrimati Bhavna Chikhalia
4. Shri V. Dhananjaya Kumar
5. Shri Dharampal Singh Malik
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2. Smt. Roli Srivastava — *Joint Secretary*
3. Shri P.D.T. Acharya — *Director*
4. Shri Ram Autar Ram — *Deputy Secretary*

INTRODUCTION

I, the Chairman, Committee on Subordinate Legislation having been authorised by the Committee to submit the report on their behalf, present this Twenty Third Report.

2. The matters covered by this Report were considered by the Committee at their sitting held on 22 August, 1995.

3. The Committee considered and adopted this Report at their sitting held on 20 December, 1995. The Minutes of the sittings relevant to this report are appended to it.

4. For facility of reference and convenience, recommendations/observations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in consolidated form in Appendix I of the Report.

NEW DELHI;
December, 1995

AMAL DATTA,
Chairman,
Committee on Subordinate Legislation.

REPORT

I

THE STANDARDS OF WEIGHTS AND MEASURES (PACKAGED COMMODITIES) AMENDMENT RULES, 1994 (GSR 314-E OF 1994)

(A)

The Standards of Weights and Measures (Packaged Commodities) Amendment Rules, 1994, were published in the Gazette of India, Extraordinary, Part-II, Section 3(i) dated 12 March, 1994. It was observed from the Preamble to the rules that the draft rules were published in the Gazette dated 12 March, 1993 and the copies of the Gazette notifications were made available to the public on 18 June, 1993 *i.e.* after a gap of more than 3 months. The concerned Ministry of Civil Supplies, Consumer Affairs and Public Distribution were asked to state the special reasons, if any, for such inordinate delay. In their reply dated 10 March, 1995, the Ministry stated as under:—

> " The Notification GSR No. 276-E dated 12.3.93 of draft rules was sent to Government of India Press for publishing in the Gazette of India, Extraordinary, Part-II, Section 3(i). The Ministry immediately after sending this notification to Press, made wide publicity by sending the copies of this notification to the major associations of trade and industry, concerned Departments/institutions etc. However, the date on which the copies of the said Gazette Notification were made available to the public, is taken as the date when the printed copies of Gazzette are received from the Press to the Government sales counters for public sale. The Government of India Press, Mayapuri was requested to furnish the reasons of delay."

1.2 In the aforesaid letter, the Government of India Press has summed up the reasons for delay as under:—

> "At the time of receiving the Notification No. GSR 276-E dated 12.3.93 for Publication in Gazette of India, Extraordinary, the Press was extremely busy in the execution of sensitive and time bound nature of Budgetary works like Detailed Demand for Grants of 40 Ministries, Performance Budget, Appropriation Account of Ministry of Defence etc., and also was busy with the printing work of Income Tax forms *i.e.* ITS-2 and ITS-3 related to revenue earning forms."

1.3 The Committee note that the copies of the Gazette Notifications containing the draft rules were made available to the Public after a gap of 3

months. The reasons for delay being attributed by the Government of India Press to the over-riding priority given to certain other budgetary works. The Committee, however, feel that such delay would defeat the very purpose of publishing the information in the Extraordinary Gazette and desire the Government to review the functioning of the Government of India Press at the highest level and take all necessary steps to streamline its procedure to avoid such delays in future.

(B)

1.4 In the Standards of Weights and Measures (Packaged Commodities) Amendment Rules, 1994, in clause (a) and (b) of sub-rule (7) of rules 13 as added read as under:—

> "(a) As far as possible the symbols for international system of Units and none other, shall be used in furnishing the net quantity of the package."
>
> "(b) As far as possible symbols shall not be given in capital form except for the unit derived from a proper name."

1.5 It was felt that the wordings 'As far as possible' in sub-rule 7(a) and (b) was vague and needed to be spelt out to make the rule precise and specific. The matter was, therefore, referred to the concerned Ministry of Civil Supplies, Consumer Affairs and Public Distribution for obtaining their comments.

1.6. In their reply dated 10 March, 1995, the Ministry stated as under:—

> "The Ministry has constituted as Standing Committee on Packaged Commodities Rules, 1977 for considering various amendment proposals of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977. The Observation of the Committee on Subordinate Legislation, namely, "It is felt that 'as far as' possible may be spelt out to make the rule precise and specific' will be placed before the Standing Committee for suggesting suitable amendment in the Rules."

1.7. The Committee observe that the wordings 'As far as possible' contained in clauses (a) and (b) of sub-rule (7) of rule 13 of the above rules was vague and needs to be spelt out to make the rules precise and specific. The Committee note from the reply of the Ministry that they have constituted a Standing Committee for suggesting suitable amendments in the rules. The Committee reiterating their earlier recommendation made in para 17 of their Third Report, Ninth Lok Sabha desire that vague expressions should not be used in the rules and the terms and expressions should be clearly specified to avoid any scope of ambiguity and obviate the possibility of being interpreted differently by different persons and desire that the Ministry should do the needful at the earliest.

II

THE CENTRAL EXCISE (FOURTH AMENDMENT) RULES, 1994 AND THE CONDITIONS AND RESTRICTIONS SPECIFIED BY THE CENTRAL GOVERNMENT TO BE OBSERVED BY A MANUFACTURER AVAILING CREDIT OF THE SPECIFIED DUTY PAID ON CAPITAL GOODS (GSR 516-E AND 517-E OF 1994)

The Central Excise (Fourth Amendment) Rules, 1994 (GSR 516-E of 1994) and the Conditions and Restrictions specified by the Central Government to be observed by a manufacturer availing credit of the specified duty paid on capital goods (GSR 517-E of 1994) were published in the Gazette of India, Extraordinary, dated 17 June, 1994. It was observed therefrom that the aforesaid conditions and Restrictions specified by the Government under rule 57R(3) of the Central Excise Rule, 1994 were notified separately as GSR 517-E instead of being notified as a part of the amendment rules notified under GSR 516-E. The Ministry of Finance (Department of Revenue) were, therefore, requested to state the rationale behind notifying such Conditions and Restrictions separately from the rules. The Ministry were also requested to state whether they had any objection in incorporating the Conditions and Restrictions as specified separately, in the rules themselves to make the rules self-contained and facilitate easy reference to the concerned public.

2.2 In their reply dated 24 March, 1995, the Ministry stated as under:—

> ".... The Notification No. 26/94-Central Excise (NT) dated 17.6.94 (GSR No. 516-E of 1994) amends Rule 57R of the Central Excise Rules, 1994.
>
> The Notification thus provides for the credit being taken on capital goods even where the same have been acquired under a loan, lease or hire-purchase agreement with a finance company. This relaxation, however, is subject to certain conditions imposed vide Notification No. 27/94-Central Excise (NT) dated 17.6.1994.
>
> With a view to ensure that these conditions (prescribed by the Central Government) are in keeping with the trade practice and genuine needs of the industry, it was only pragmatic and desirable that a separate Notification [Notification No. 27/94-CE(NT) dated 17.6.1994 be issued to prescribe these conditions]. They could change from time to time in keeping with the changes in the trade

practice or industry needs. An omnibus Notification would require periodical change in the Rule (a statutory provision) and could create confusion and legal complication.

It is, therefore, adviseable to keep the two Notifications separate. Their amalgamation is not desireable."

2.3 The Committee observe that the aforesaid Conditions and Restrictions specified by the Government under rule 57R(3) of the Central Excise Rule, 1994 have been notified separately as GSR 517-E instead of being notified as a part of the amendment rules notified under GSR 516-E and desire that the Ministry should incorporate the Conditions and Restrictions as specified separately, in the rules themselves to make the rules self-contained and facilitate easy reference to the concerned public.

2.4 The Committee are not convinced by the reply of the Ministry of Finance in notifying the Conditions and Restrictions separately from the Central Excise Rules, the reason being that such Conditions and Restrictions could change from time to time in keeping with the changes in the trade practice and genuine needs of the industry and incorporating them in the rules would create confusion and legal complications. The Committee emphasise that the rules should be comprehensive and self-contained in all respects, so that the public do not face any difficulty in following them. The Committee also desire that even if the Conditions and Restrictions under Rule 57R (3) are liable to be changed frequently, the Ministry should have no difficulty in incorporating them in the body of the rule and notify the amendment to rules as and when necessity arises.

2.5 The Committee hold that under Article 13 (3) of the Constitution a notification is Law and hence is a part of the Subordinate Legislation and therefore the notification containing conditions and restrictions must form a part of the statutory rules which are laid on the Table of both the House for scrutiny by Parliament. The Committee, therefore, desire that the Ministry of Finance (Department of Revenue) should amend the Central Excise Rules suitably so as to incorporate the conditions and restrictions specified under Rule 57R(3) as part of the rules themselves.

III

THE TEXTILES (DEVELOPMENT AND REGULATIONS) ORDER, 1992 (GSR 916-E of 1992)

The Textile (Development and Regulations) Order, 1992 (GSR 916-E of 1992) was published in the Gazette of India: Extraordinary, dated 7 December, 1992. Clause 13(1) (d) of the Order read as under:—

> "13(1) The Textile Commissioner may, with a view to securing compliance with this Order:—
>
> ** ** ** **
>
> (d) enter and search or authorise any person to enter and search any premises and seize any article in respect of which he has reason to believe that a contravention of this Order has been committed and any other article in the premises which he has reasons. to believe that such premises has been or is intended to be used in connection with such contravention."

3.2 The expression 'any person' in the clause appeared to give wide discretion to the Textile Commissioner to appoint any person for the purposes of compliance of the Order, irrespective of his rank and position. It was, therefore, felt that the clause should be amended to provide for the minimum rank of the persons who could be so authorised for conducting searches and seizures. The matter was, therefore, taken up with the concerned Ministry to elicit their comments in this regard. The Ministry were also requested to state whether they had any objection in amending the Order to that effect.

3.3 In their reply dated 31 August, 1994 the Ministry intimated that necessary amendment to the said Order has been published in the Gazette of India: Extraordinary *vide* Ministry of Textiles Notification No.8/78/93-TPC dated 21 July, 1994, which read as under:—

> "...In the Textiles (Development and Regulation) Order, 1993:— (i) in cluase 13, in sub-clause (1) in item (d) after the words "authorise any person", the words "not below the rank of Superintendent, Enforcement Officer (Technical) or Technical Investigator" shall be inserted."

3.4 The Committee noted that Clause 13(1) of the above Order gave wide discretion to the Textile Commissioner to appoint any person to enter and search any premises and seize any article in respect of which he has reason to believe that a contravention of this Order has been committed and any

other article in the premises which he has reasons to believe that such premises have been or are intended to be used in connection with such contravention and felt that the clause should be amended to provide for the minimum rank of the persons who could be so authorised for conducting searches and seizures.

3.5 The Committee note that on being pointed out, the Ministry of Textiles have since notified the requisite amendment to the above order specifying therein the minimum rank of the officers who could be so authorised by the Textiles Commissioner to enter and search any premise and seize any article. The Committee desire that while notifying an Order the Ministry should ensure that the order is precise and specific and does not contain any provisions conferring wide or arbitrary discretion on the implementing authority.

IV

REPRESENTATION REGARDING SERVICE REGULATIONS OF REGIONAL RURAL BANKS

In his representation dated 13 November, 1994, addressed to Chairman, Committee on Subordinate Legislation of Lok Sabha, Shri S.K. Bhattacharjee, General Secretary, All India Regional Rural Banks' Federation, Siliguri stated as under:—

"...that Regional Rural Banks (RRBs) were formed by an enactment of Parliament named Regional Rural Banks Act—1976 and the ownership of the Banks numbering 196 vest with the Government of India, Sponsor Banks and State Government in the ratio of 50:35:15 respectively.

Staff Service Regulations of the Banks were prepared by the Banking Division, Government of India and RRBs were advised to adopt the same. Accordingly the same Service Regulations have come into force in RRBs. Incidently it can be mentioned here that the Service Regulations are general and regulates on Conduct Disciplinary and appeal regulations in particular. These are very abstract and discriminatory. In the process over 65,000 employees comprising of over 24,500 officers are made to suffer due to arbitrary, vindictive, malafide action of the Management and inadequate instructions.

In this connection it can be mentioned here that Shri (Justice) S. Obul Reddy, Chairman, National Industrial Tribunal constituted by the Government of India as per direction of Supreme Court while granting parity of salary, allowances and perks of RRBs employees and officers with that of their counterparts in sponsor banks directed the Government of India to prescribe the similar service conditions for officers and employees. A Committee set up by NABARD as per direction of Government of India under the Chairmanship of Shri R.C. Gupta, Chief General Manager, NABARD also recommended that the service Regulations of officers of RRBs should be the same like their counterparts in sponsor banks. So far as the non-supervisory/Workmen staff are concerned the Committee recommended for adoption of the provisions of the Bipartite Agreements in line with the existing rules in sponsor banks. However, so far no action had been taken and the abstract, defective and inadequate service Regulations of RRBs continue to become source of agony for RRB employees and officers."

4.2 In a communication dated 2 December, 1994 the Ministry of Finance, Department of Economic Affairs (Banking Division) furnished the following comments on the points raised in the said representation:—

"...Consequent upon the implementation of the National Industrial Tribunal (NIT) Award read with the Equation Committee Report, certain changes were to be brought about in the Service Regulations, Recruitment and Promotion Policy for the RRBs Staff. NABARD had accordingly constituted a Working Group on 22nd August, 1991 for this purpose. The recommendations of the Working Group have been generally accepted by the Government on the advice of the NABARD. As a result of the acceptance of these recommendations, action on the following points was required to be taken:—

(a) issue of instructions clarifying various issues relating to Pay scales, allowances and other benefits to RRB employees.

(b) framing of RRBs (Appointment and Promotions of Officers and other employees) Rules and issuing of Notification under Section 29 of the RRB Act, 1976.

(c) framing of staff Service Regulations to be adopted by the Board of Directors of RRBs and issuing of notification under Section 30 of the RRBs Act, 1976.

The instructions in regard to (a) have already been issued by NABARD on 20.3.93 to all RRBs and sponsor banks. In regard to Part (b) and (c) i.e. Recruitment and Promotion Policy and Staff Service Regulations respectively, draft of the rules and regulations have been prepared and have since been examined further in consultation with sponsor banks of RRBs and NABARD. NABARD has in consultation with sponsor RRBs submitted the draft Recruitment and Promotion Policy and Staff Service Regulations for RRBs. These rules and regulations are under examination by Government. With a view to finalise the final draft for vetting by Ministry of Law and Justice, further discussion have been held recently with the Officers of NABARD. These rules will be notified after consultation with Ministry of Law and Justice as early as possible."

4.3 The Committee observe that in terms of Section 17 of the Regional Rural Banks Act, 1976, a Regional Rural Bank can appoint such number of officers and employees as may be considered necessary and determine their terms and conditions of Service. It has further been provided that the remuneration of officers and other employees so appointed by the RRB should be such as may be determined by the Central Government. The Committee feel that as the Government have already framed the draft rules/ regulations to implement the recommendations of the National Industrial

Tribunal/Working Group set up by NABARD, there should be no further delay in finalisation and notification of such rules/regulations, as this would have a very adverse effect on the interest of the officers/employees of the Regional Rural Banks.

4.4 The Committee desire that the Government should pay serious attention to the matter and convene a joint meeting of all the concerned agencies and finalise the rules/regulations at the earliest.

V

THE DEPARTMENT OF ELECTRONICS (UPPER DIVISION CLERK'S GRADE DEPARTMENTAL COMPETITIVE EXAMINATION) AMENDMENT REGULATIONS, 1994

The Department of Electronics (Upper Division Clerk's Grade Department Competitive Examination) Amendment Regulations, 1994 was published in the Gazette of India, Part-II, Section 3(i) dated 24 September, 1994. It was observed that the Preamble to these Regulations did not bear the name of the Act which authorised the Government to make the said Regulations but instead were made in pursuance of rule 5 of the Department of Electronics (Group 'B' and Group 'C' Posts) Recruitment Rules, 1977.

5.2 The matter was referred to the concerned Department of Electronics to State whether they have issued any corrigenda to rectify the error and whether they have any objection to the amending of the regulations to the desired effect. In their reply dated 15 February, 1995, the Department of Electronics stated as under:—

> "....In Department of Electronics, Recruitment Rules for Group 'B' and Group 'C' posts were framed under Article 309 of the Constitution. Rule number 05 of those Recruitment Rules relates to conduct of Competitive Examinations. In pursuance of that rule only the original regulations for Departmental Competitive Examinations were framed. Subsequent amendments to those regulations are also being made in pursuance of Rule No. 05 of the Recruitment Rules only, which were framed under Article 309 of the Constitution."

5.3 The Committee observe that the Preamble to the above Regulations did not bear the name of the Act which authorise the government to make the regulations. The Committee note from the reply of the Department of Electronics that the Recruitment Rules for Group 'B' and Group 'C' posts in that Department were framed under article 309 of the Constitution. The original regulations were framed in pursuance of rule 5 related to conduct of competitive examinations.

5.4 The Committee feel that in the absence of the name of the statutory authority in the Preamble to the regulations it may be difficult to know

whether the rules are made under due legal authority and within the limits laid down in the parent law. The Committee, therefore, emphasise that Preamble to all rules/regulations whether original or amended should bear the name of the statutory authority empowering the Government to do so and desire that the Department should amend the regulations accordingly.

VI

THE CENTRAL SECRETARIAT CLERICAL SERVICE (AMENDMENT) RULES, 1994 (GSR 460 OF 1994)

The Central Secretariat Clerical Service (Amendment) Rules, 1994 were published in the Gazette of India, Part II, Section 3(i) dated 17 September, 1994. Rule 1(1) indicating the short title to the rules was incomplete and read as under:—

"1. (1) These rules may be called the Central Secretariat Central Government in the Department of Person."

6.2 It was noticed that the short title did not make proper mention of the particulars of the rule. However from the Hindi version of the rules, it was gathered that the short title read as 'The Central Secretariat Clerical Service (Amendment) Rules, 1994'. The matter was referred to the Ministry of Personnel, Public Grievances and Pensions to state whether any corrigenda has since been issued to rectify the error so that the short title bore the full particulars of the rule. In their reply the Ministry has forwarded a copy of the corrigendum issued by them for publication after rectifying the error as desired.

6.3 The Committee noticed that the short title to the Central Secretariat Clerical Service (Amendment) Rules, 1994 was incomplete and as such did not make proper mention of the particulars of the rule. However, the Committee note that on being pointed out to the Ministry of Personnel, Public Grievances and Pensions, they have issued an amending notification to rectify the error that has occurred in the short title.

6.4 The Committee desire that the Ministry should be more vigilant so that such lapses do not occur in future.

VII

THE ENVIRONMENT (PROTECTION) THIRD AMENDMENT RULES, 1992 (GSR 475-E OF 1992)

The Environment (Protection) Third Amendment Rules, 1992 were published in the Gazette of India, Extraordinary, Part II, Section 3 (i) dated 5 May, 1992. It was observed from the foot-note appended to the rules that certain amendments to the rules were published under S.O. (E) numbers and several other under GSR (E) numbers. Normally, for the sake of uniformity and easy referencing, the amendments notifications should be published under the same part of the Gazette in which the principal rules have been published. The matter was referred to the concerned Ministry of Environment and Forests for ascertaining the reasons for deviation from the normal practice in this particular case. In their reply dated 17 April, 1995 the Ministry stated as under:—

> "....The position has been examined in consultation with the Legislative Department of the Ministry of Law, Justice and Company Affairs. The correct position is that the Environment (Protection) Rules, 1986 should normally be published in GSRs in Part II, Section 3, sub-section (i), of the Gazette of India. It appears that inadvertently these Rules were published as S.O. No. 844-E in Part II, Section 3, sub-section (ii) of the Gazette. Following this, the amendments to the Rules were also published in sub-section (ii) as SOs.
>
> In future, rules and amendments would be published as GSRs in Part II, Section (i) of the Gazette of India."

7.2 The Committee observe that according to the Ministry of Environment and Forest, the principal rules i.e. Environment (Protection) Rules, 1986 should have been published as GSRs, but inadvertently, these got published as SOs and as a consequence, the amendment to these rules were also got published as SOs. The Committee reiterating their earlier recommendation that as a general principal once the original rules are published in a particular section of the official gazette i.e. under S.O. numbers or GSR numbers etc. as the case may be, any further amendments to the original rules should as well be published in the same section of the gazette and desire that the Ministry should be more watchful in future to avoid mistakes of such nature and evolve suitable procedural safeguards to check such lapses.

VIII

THE DESICCATED COCONUT GRADING AND MARKING RULES, 1994 (GSR 632 OF 1994)

The Desiccated Coconut Grading and Marking Rules, 1994, were published in the Gazette of India, Part-II, Section 3 (i) dated 17 December, 1994. It was observed that the draft rules were made available to the public on 27 May, 1993 for eliciting their opinion but the final rules were notified on 17 December, 1994., i.e. after a gap of 18 months which is an inordinate delay. The matter was taken up with the concerned Ministry of Rural Development for obtaining their comments in the matter. In their reply dated 16 May, 1995, the Ministry stated as under:—

> "As desiccated coconut was a new commodity to be covered under 'Agmark' no proper response was received on the draft rules from concerned organisations/Traders etc. in time. A meeting to consider the suggestions/comments received was convened on 28.9.93 and thereafter, a draft of final Notification was prepared by the AMA, which was received in the Ministry in January, 1994. The draft of final notification was examined in the Ministry and referred to Ministry of Law for vetting on 10th February, 1994 with the approval of MOS(RD). The Ministry of Law has returned the draft notification for discussions. After discussions with the Ministry of Law, the file was referred back to them on 11th April, 1994. The vetted draft was received back in May, 1994 and was referred to official Language Wing for Hindi translation. After completing other formalities, the final notification was sent to Government of India Press on 23.11.94 for publication in the Official Gazette. Steps will be taken to minimise such delays in future."

8.2 The Committee observe that there was an inordinate delay of abou 18 months in notifying the final rules after the publishing of draft rules and obtaining the comments/suggestions of the public. The Committee find that there were only procedural delays and they were not of such a serious nature as to justify the delay in notifying the final rules.

8.3 The Committee desire that the Ministry of Rural Areas and Employment (Department of Rural Development) should streamline their procedures to cut down delay in the notification of the final rules.

IX

THE PREVENTION OF FOOD ADULTERATION (VIITH) AMENDMENT RULES, 1994 (GSR 847-E OF 1994)

The Prevention of Food Adulteration (VIIth) Amendment Rules, 1994 were published in the Gazette of India, Extraordinary, Part II, Section 3 (i) dated 7 December, 1994. It was observed that the draft rules were made available to the public on 2nd December, 1993 for eliciting their opinion but the final rules were notified only on 7 December, 1994, i.e. after a period of more than 12 months. The matter was taken up with the concerned Ministry of Health and Family Welfare for obtaining their comments in the matter. In their reply dated 21 June, 1995, the Ministry stated as under:—

> "....every effort is made to see that the publication of the final amendment of rules is done within the stipulated time prescribed by the Committee on Subordinate Legislation. However, in spite of best efforts to clear the proposal at every stage with promptness, because of the technical and sensitive nature of the subject, considerable longer period is taken at each level in clearing the proposal. At time related clarifications-queries are required to be clarified by convening meetings. Similarly inter-departmental consultations including O.L. Wing of Ministry of Law for Hindi translation, also pass through similar exercises which result in considerable delay at each stage....
>
> The Ministry will however, make all out efforts in ensuring that the publication, of final amendment of rules is done within the stipulated time. We are requesting the concerned departments to help in clearing the proposal for amendment of rules expeditiously keeping in view the time frame prescribed by the Committee on Subordinate Legislation. This will be monitored every month also to prevent delays."

9.2. The Committee observe that there was a delay of 12 months in notifying the final rules after publishing the draft rules and making them available to the public for eliciting their opinion thereon.

9.3 The Committee find that the Ministry of Health and Family Welfare have attributed the reasons for delay in final notification of the above rules to various procedural matters and were not of very serious nature to justify the delay. The Committee note that the Ministry have assured that efforts

would be taken to publish the final amendment rules within the stipulated time of six months as recommended by the Committee in their earlier reports. The Committee hope that the Ministry would keep up its assurance in future.

NEW DELHI
December, 1995

AMAL DATTA,
Chairman,
Committee on Subordinate Legislation.

APPENDICES

APPENDIX-I

(*Vide* para 4 of the Introduction of the Report)

SUMMARY OF RECOMMENDATIONS MADE IN THE REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(TENTH LOK SABHA)

Sl. No.	Reference to para No. in the Report	Summary of Recommendations
1	2	3
1	1.3 & 1.7	*The Standards of Weights and Measures (Packaged Commodities) Amendment Rules, 1994 (GSR 314-E of 1994)* The Committee note that the copies of the gazette notifications containing the draft rules were made available to the public after a gap of 3 months. The reasons for delay being attributed by the Government of India Press to the over-riding priority given to certain other budgetary works. The Committee, however, feel that such delay would defeat the very purpose of publishing the information in the Extraordinary Gazette and desire the Government to review the functioning of the Government of India Press at the highest level and take all necessary steps to streamline its procedure to avoid such delays in future. The Committee observe that the wordings 'As far as possible' contained in clauses (a) and (b) of sub-rule (7) of rule 13 of the above rules was vague and needs to be spelt out to make the rules precise and specific. The Committee note from the reply of the Ministry that they have constituted a Standing Committee for suggesting suitable amendments in the rules. The Committee reiterating their earlier recommendation made in para 17 of their Third Report, Ninth Lok Sabha desire that vague expressions should not be used in the rules and the terms and expressions should be clearly specified to

1	2	3
		avoid any scope of ambiguity and obviate the possibility of being interpreted differently by different persons and desire that the Ministry should do the needful at the earliest.
2	2.3 to 2.5	***The Central Excise (Fourth Amendment) Rules, 1994 and the Conditions and Restrictions specified by the Central Government to be observed by a manufacturer availing credit of the specified duty paid on capital goods (GSR 516-E and 517-E of 1994)***
		The Committee observe that the aforesaid Conditions and Restrictions specified by the Government under rule 57R(3) of the Central Excise Rule, 1994 have been notified separately as GSR 517-E instead of being notified as a part of the amendment rules notified under GSR 516-E and desire that the Ministry should incorporate the Conditions and Restrictions as specified separately, in the rules themselves to make the rules self-contained and facilitate easy reference to the concerned public.
		The Committee are not convinced by the reply of the Ministry of Finance in notifying the Conditions and Restrictions separately from the Central Excise rules, the reason being that such Conditions and Restrictions could change from time to time in keeping with the changes in the trade practice and genuine needs of the industry and incorporating them in the rules would create confusion and legal complications. The Committee emphasise that the rules should be comphcrensive and self-contained in all respects, so that the public do not face any difficulty in following them. The Committee also desire that even if the Conditions and Restrictions under Rule 57R(3) are liable to be changed frequently, the Ministry should have no difficulty in incorporating them in the body of the rule and notify the amendment to rules as and when necessity arises.
		The Committee hold that under Article 13(3) of the Constitution a notification is Law and hence is a part of the Subordinate Legislation and therefore the

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		notification containing conditions and restrictions must form a part of the statutory rules which are laid on the Table of both the Houses for scrutiny by Parliament. The Committee therefore, desire that the Ministry of Finance (Department of Revenue) should amend the Central Excise Rules suitably so as to incorporate the conditions and restrictions specified under Rule 57R(3) as part of the rules themselves.
3	3.4 & 3.5	*The Textiles (Development and Regulations) Order, 1992 (GSR 916-E of 1992)* The Committee noted that Clause 13(1) of the above Order gave wide discretion to the Textile Commissioner to appoint any person to enter and search any premises and seize any article in respect of which he has reason to believe that a contravention of this Order has been committed and any other article in the premises which he has reasons to believe that such premises have been or are intended to be used in connection with such contravention and felt that the clause should be amended to provide for the minimum rank of the persons who could be so authorised for conducting searches and seizures. The Committee note that on being pointed out, the Ministry of Textiles have since notified the requisite amendment to the above order specifying therein the minimum rank of the officers who could be so authorised by the Textiles Commissioner to enter and search any premise and seize any article. The Committee deisre that while notifying an Order the Ministry should ensure that the order is precise and specific and does not contain any provisions conferring wide or arbitrary discretion on the implementing authority.
4	4.3 & 4.4	*Representation regarding Service Regulations of Regional Rural Banks* The Committee observe that in terms of Section 17 of the Regional Rural Banks Act, 1976, a Regional Rural Bank can appoint such number of officers and

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		employees as may be considered necessary and determine their terms and conditions of Service. It has further been provided that the remuneration of officers and other employees so appointed by the RRB should be such as may be determined by the Central Government. The Committee feel that as the Government have already framed the draft rules/ regulations to implement the recommendations of the National Industrial Tribunal/Working Group set up by NABARD, there should be no further delay in finalisation and notification of such rules/regulations, as this would have a very adverse effect on the interest of the officers/employees of the Regional Rural Banks. The Committee desire that the Government should pay serious attention to the matter and convene a joint meeting of all the concerned agencies and finalise the rules/regulations at the earliest.
5	5.3 & 5.4	*The Department of Electronics (Upper Division Clerk's Grade Departmental Competitive Examination) Amendment Regulations, 1994* The Committee observe that the Preamble to the above Regulations did not bear the name of the Act which authorise the Government to make the regulations. The Committee note from the reply of the Department of Electronics that the Recruitment Rules for Group 'B' and Group 'C' posts in that Department were framed under article 309 of the Constitution. The original regulations were framed in pursuance of rule 5 related to conduct of competitive examinations. The Committee feel that in the absence of the name of the statutory authority in the Preamble to the regulations it may be difficult to know whether the rules are made under due legal authority and within the limits laid down in the parent law. The Committee, therefore, emphasise that Preamble to all rules/regulations whether original or amended should bear the name of the statutory authority empowering the Government to do so and desire that the

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		Department should amend the regulations accordingly.
6	6.3 & 6.4	*The Central Secretariat Clerical Service (Amendment) Rules, 1994 (GSR 460 of 1994)* The Committee noticed that the short title to the Central Secretariat Clerical Service (Amendment) Rules, 1994 was incomplete and as such did not make proper mention of the particulars of the rule. However, the Committee note that on being pointed out to the Ministry of Personnel, Public Grievances and Pensions, they have issued an amending notification to rectify the error that has occurred in the short title. The Committee desire that the Ministry should be more vigilant so that such lapses do not occur in future.
7	7.2	*The Environment (Protection) Third Amendment Rules, 1992 (GSR 475-E of 1992)* The Committee observe that according to the Ministry of Environment and Forest, the Principal rules *i.e.* Environment (Protection) rules, 1986 should have been published as GSRs, but inadvertently, these got published as SOs and as a consequence, the amendment to these rules were also got published as SOs. The Committee reiterating their earlier recommendation that as a general principal once the original rules are published in a particular section of the official gazette *i.e.* under SO numbers or GSR numbers etc. as the case may be any further amendments to the original rules should as well be published in the same section of the gazette and desire that the Ministry shoule be more watchful in future to avoid mistakes of such nature and evolve suitable procedural safeguards to check such lapses.
8	8.2 & 8.3	*The Desiccated Coconut Grading and Marking Rules, 1994 (GSR 632 of 1994)* The Committee observe that there was an inordinate delay of about 18 months in notifying the final rules after the publishing of draft rules and

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		obtaining the comments/suggestions of the public. The Committee find that there were only procedural delays and they were not of such a serious nature as to justify the delay in notifying the final rules. The Committee desire that the Ministry of Rural Areas and Employment (Department of Rural Development) should streamline their procedures to cut down delay in the notification of the final rules.
9	9.2 & 9.3	*The Prevention of Food Adulteration (VIIth Amendment Rules, 1994 (GSR 847-E of 1994)* The Committee observe that there was a delay of 12 months in notifying the final rules after publishing the draft rules and making them available to the public for eliciting their opinion thereon. The Committee find that the Ministry of Health and Family Welfare have attributed the reasons for delay in final notification of the above rules to various procedural matters and were not of very serious nature to justify the delay. The Committee note that the Ministry have assured that efforts would be taken to publish the final amendment rules within the stipulated time of six months as recommended by the Committee in their earlier reports. The Committee hope that the Ministry would keep up its assurance in future.

MINUTES

MINUTES OF THE SIXTY FIRST SITTING ON THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1995-96)

The Committee met on Tuesday, 22 August, 1995 from 15.30 hours to 16.30 hours.

PRESENT

Shri Amal Datta — *Chairman*

MEMBERS

2. Smt. Bhavna Chikhalia
3. Shri V. Dhananjaya Kumar
4. Shri D. Pandian
5. Shri K.G. Shivappa
6. Shri Umrao Singh
7. Shri Swarup Upadhyay

SECRETARIAT

1. Shri Ram Autar Ram— *Deputy Secretary*
2. Shri B.D. Swan — *Assistant Director*

2. The Committee considered Memoranda Nos. 119 to 128 as follows:—

(i) *The Standards of Weights and Measures (Packaged Commodities) Amendment Rules, 1994 (GSR 314-E of 1994) (Memorandum No. 119)*

(A)

3. The Committee noted that the copies of the gazette notifications containing the draft rules were made available to the public after a gap of 3 months. The reasons for delay being attributed by the Government of India Press to the over-riding priority given to certain other budgetary works. The Committee, however, felt that such delay defeats the very purpose of publishing the information in the Extraordinary Gazette and desired the Government to review the functioning of the Government of India Press at the highest level and take all necessary steps to streamline its procedure to avoid such delays in future.

(B)

4. The Committee observed that the wordings 'As far as possible' contained in clauses (a) and (b) of sub-rule of rule 13 of the above rules was vague and needed to be spelt out to make the rules precise and specific. The Committee noted from the reply of the Ministry that they have constituted a Standing Committee for suggesting suitable amendments

in the rules. The Committee reiterated their earlier recommendation made in para 17 of their Third Report, Ninth Lok Sabha that vague expressions should not be used in the rules and terms and expressions should be clearly specified to avoid any scope of ambiguity and obviate the possibility of being interpreted differently by different persons and desired that the Ministry should do the needful at the earliest.

(ii) The Central Excise (Fourth Amendment) Rules, 1994 and the Conditions and Restrictions specified by the Central Government to be observed by a manufacturer availing credit of the specified duty paid on Capital Goods (GSR 516-E and 517-E of 1994) (Memorandum 120)

5. The Committee observed that the aforesaid Conditions and Restrictions specified by the Government under rule 57R(3) of the Central Excise Rule, 1994 were notified separately as GSR 517-E instead of being notified as a part of the amendment rules notified under GSR 516-E and desired the Ministry to incorporate the Conditions and Restrictions as specified separately, in the rules themselves to make the rules self-contained and facilitate easy reference to the concerned public.

6. The Committee were not convinced with the reply of the Ministry of Finance in notifying the Conditions and Restrictions separately from the Central Excise Rules, the reason being that such Conditions and Restrictions could change from time to time in keeping with the changes in the trade practice and genuine needs of the industry and incorporating them in the rules would create confusion and legal complications. The Committee emphasised that the rules should be comprehensive and self-contained in all respects, so that the public do not face any difficulty to follow them. The Committee also desired that even if the conditions and Restrictions under Rule 57(3) are liable to be changed frequently, there should not be any difficulty in incorporating them in the body of the rule. The Ministry can always notify the amendment to rules as and when necessity arises.

7. The Committee held that under Article 13(3) of the Constitution a notification is Law and hence is a part of the Subordinate Legislation and therefore the notification containing conditions and restrictions must form a part of the statutory rules which are laid on the table of the House for scrutiny by Parliament. The Committee therefore, desired that the Ministry of Finance (Department of Revenue) should amend the Central Excise Rules suitably so as to incorporate the conditions and restrictions specified under Rule 57R(3) as part of the rules themselves.

(iii) The Textiles (Development and Regulations) Order, 1992 (GSR 916-E of 1992) (Memorandum No. 121)

8. The Committee noted that Clause 13(1) of the above Order gave wide discretion to the Textile Commissioner to appoint any person to enter and search any premises and seize any article in respect of which he has reason

to believe that a contravention of this Order has been committed and any other article in the premises which he has reasons to believe that such premises has been or is intended to be used in connection with such contravention and felt that the clause should be amended to provide for the minimum rank of the persons who could be so authorised for conducting searches and seizures.

9. The Committee noted that on being pointed out, the Ministry of Textiles have since notified the requisite amendment to the above order specifying therein the minimum rank of the officers who could be so authorised by the Textiles Commissioner to carry on searches and seizures of the premises. The Committee desired that the Ministry should ensure in future while notifying an Order that the order should be precise and specific and does not contain any provisions conferring wide or arbitrary discretion on the implementing authority.

(iv) Representation regarding Service Regulations of Regional Rural Banks (Memorandum No. 122)

10. The Committee observed that in terms of Section 17 of the Regional Rural Banks Act, 1976, a Regional Rural Bank can appoint such number of officers and employees as may be considered necessary and determine their terms and conditions of Service. It has further been provided that the remuneration of officers and other employees so appointed by the RRB should be such as may be determined by the Central Government. The Committee felt that as the Government have already framed the draft rules/regulations to implement the recommendations of the National Industrial Tribunal/Working Group set up by NABARD, there should be no further delay in finalisation and notification of such rules/regulations, as this would have a very adverse effect on the interest of the officers/employees of the Regional Rural Banks.

11. Committee desired that the Government should pay serious attention to the matter and convene a joint meeting of all the concerned agencies and finalise the rules/regulations at the earliest.

(v) The Department of Electronics (Upper Division Clerk's Grade Departmental Competitive Examination) Amendment Regulations, 1994 (Memorandum No. 123)

12. The Committee observed that the Preamble to the above Regulations did not bear the name of the Act which authorised the government to make the regulations. The Committee noted from the reply of the Department of Electronics that the Recruitment Rules for Group 'B' and Group 'C' posts in that Department were framed under article 309 of the Constitution. The original regulations were framed in pursuance of rule 5 related to conduct of competitive examinations.

13. The Committee felt that in the absence of the name of the statutory authority in the preamble to the regulations it may be difficult to know

whether the rules were made under due legal authority and within the limits laid down in the parent law. The Committee, therefore, emphasised that Preamble to all rules/regulations whether original or amended should bear the name of the statutory authority empowering the Government to do so and desired the Department to amend the regulations accordingly.

(vi) The Central Secretariat Clerical Service (Amendment) Rules, 1994 (GSR 460 of 1994) (Memorandum No. 124)

14. The Committee noticed that the short title to the Central Secretariat Clerical Service (Amendment) Rules, 1994 was incomplete and as such did not make proper mention of the particulars of the rule. However, the Committee noted that on being pointed out to the Ministry of Personnel, Public Grievances and Pensions, they have issued an amending notification to rectify the error that has occured in the short title.

15. The Committee desired that the Ministry should be more vigilant so that such lapses do not occur in future.

(vii) * * * *

(viii) The Environment (Protection) Third Amendment Rules, 1992 (GSR 475-E of 1992) (Memorandum No. 126)

19. The Committee observed that according to the Ministry of Environment and Forest, the Principal rules *i.e.* Environment (Protection) Rules, 1986 should have been published as GSRs, but inadvertently, these got published as SOs and as a consequence, the amendment to these rules were also got published as SOs. The Committee reiterating their earlier recommendation that as a general principal once the original rules are published in a particular section of the official gazette *i.e.* under S.O. numbers or GSR numbers etc. as the case may be any further amendments to the original rules should as well be published in the same section of the gazette and desired that the Ministry should be more watchful in future to avoid mistakes of such nature and evolve suitable procedural safeguards to check such lapses.

(ix) The Desiccated Coconut Grading and Marking Rules, 1994 (GSR 632 of 1994) (Memorandum No. 127)

20. The Committee observed that there was an inordinate delay of about 18 months in notifying the final rules after the publishing of draft rules and obtaining the comments/suggestions of the public. The Committee found that there were only procedural delays and they were not of such a serious nature as to justify the delay in notifying the final rules.

21. The Committee desired that the Ministry of Rural Areas and Employment (Department of Rural Development) should streamline their procedures to cut down delay in the notification of the final rules.

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* Omitted portions of the minutes are not covered in this Report.

(x) The Prevention of Food Adulteration (VIIth Amendment Rules, 1994) (GSR 847-E of 1994) (Memorandum No. 128)

22. The Committee observed that there was a delay of 12 months in notifying the final rules after publishing the draft rules and making them available to the public for eliciting their opinion thereon.

23. The Committee found that the Ministry of Health and Family Welfare have attributed the reasons for delay in final notification of the above rules to various procedural matters and were not of very serious nature to justify the delay. The Ministry have however assured that efforts would be taken to publish the final amendment rules within the stipulated time of six months as recommended by the Committee in their earlier reports. The Committee hoped that the Ministry would keep up its assurance in future.

24 and 25. * * *

26. The Committee then adjourned to meet again on 5 September, 1995.

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* Omitted portions of the minutes are not covered in this Report.

MINUTES OF THE SIXTY SIXTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1995-96

The Committee met on Wednesday, 20 December, 1995 from 15.00 to 16.15 hours.

PRESENT

Shri Amal Datta — *Chairman*

MEMBERS

2. Shri Prithviraj D. Chavan
3. Shrimati Bhavna Chikhalia
4. Shri V. Dhananjaya Kumar
5. Prof. K.V. Thomas
6. Shri Umrao Singh

SECRETARIAT

1. Shri P.D.T. Achary — *Director*
2. Shri Ram Autar Ram— *Deputy Secretary*
3. Shri B.D. Swan — *Assistant Director*

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The Committee considered and adopted the draft Twenty-third Report.

The Committee then adjourned.

Omitted portions of the minutes are not covered in this Report.